

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 of the)
Commission's Rules Governing)
the Public Mobile Services)

CC Docket No. 92-115

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COMMENTS ON MOTION FOR EXTENSION OF TIME

C-Two-Plus Technology, Inc. ("C2+") submits these comments in response to the "Motion for Extension of Time" filed on February 2, 1995 by The Mobile and Personal Communications Division of the Telecommunications Industry Association ("TIA Motion"). C2+ respectfully suggests that if the Commission is going to consider the "minor changes" jointly proposed by TIA and the Cellular Telecommunications Industry Association ("CTIA")¹ -- as well as any further "minor modifications" which TIA and CTIA may "finally present[] to the Commission within the next thirty (30) days" -- it should afford other interested parties an opportunity to comment on those proposals. See TIA Motion at ¶¶5-6; Joint Reply at ¶4 n.8.

¹ See "Joint Reply and Comment" filed by TIA and CTIA on Feb. 2, 1995, as amended Feb. 3, 1995 ("Joint Reply"), at ¶¶4-5 and Attachment A.

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New rule Section 22.919 was adopted by the Commission as part of a general overhaul of the Part 22 rules governing mobile services. Report and Order, CC Docket No. 92-115, 9 FCC Rcd. 6513 (1994) ("Report and Order"). That rule, and the relevant portions of the Report and Order discussing it, generated numerous petitions for reconsideration, several of which argued that the new rule would prove ineffective as an anti-fraud measure and would seriously and adversely affect cellular consumers. See, e.g. Petition for Reconsideration of Ericsson Corporation, filed Dec. 19, 1994 ("Ericsson Petition"), at 3, 9 (Section 22.919 "will have very little impact on the fraud problem" but is likely to have "unintended harmful effects" on consumers); Comment of Matsushita Communications Industrial Corporation, filed Jan. 20, 1995, at 3 (Section 22.919 "would impose substantial costs and inconvenience on manufacturers and, more importantly, on cellular phone subscribers"). In fact, in its "Motion for Stay" of Section 22.919 filed Dec. 19, 1994 ("TIA Stay Motion"), TIA characterized that rule as a "prohibitively expensive," "tremendously wasteful," "unwarranted," "totally unnecessary," and "ineffective way to fight cellular fraud." TIA Stay Motion at ii, 6, 9, 14. Specifically, TIA stated that Section 22.919 "will dramatically increase the cost of

equipment and service to consumers" but "will not be effective in fighting cellular fraud." Id. at ii, 15.²

After CTIA opposed and the Commission denied TIA's Motion for Stay, representatives of TIA and CTIA "met numerous times," to attempt to resolve the differences "that appeared to exist" in their respective filings. TIA Motion at ¶4. According to TIA, it became apparent that "the only significant issue" between TIA and CTIA was the "manufacturer's ability to upgrade and otherwise manipulate a mobile unit's operating software without compromising the industry's efforts to combat cellular fraud." Id. As a result of those meetings, TIA and CTIA have requested that the Commission adopt "certain minor changes" in Section 22.919 which "will resolve" this issue. Id. at ¶5; see also Joint Reply at ¶¶4-5 and Attachment A. In addition, they have "agreed to hold further meetings within the next few weeks in order to address additional steps...to fight cellular fraud" and have stated that those meetings are likely "to require further minor modifications to the Commission's Rules." TIA Motion at ¶6; Joint Reply at ¶4 n.8. Consequently, they request an exten-

² TIA's "Petition for Clarification and Reconsideration," filed Dec. 19, 1994 ("TIA Petition"), was equally flattering in its description of the new rule, labeling it "an expensive and ineffective method of fighting cellular fraud" which "will never be successful" in fighting fraud, but ultimately "will substantially increase the cost, and decrease the quality of service and equipment, to consumers." TIA Petition at iii-iv.

sion of time in which to propose additional rule modifications, which they expect to be "finally presented to the Commission within the next thirty (30) days." TIA Motion at ¶6.

C2+ is encouraged by CTIA's apparent recognition that there are: (a) legitimate, non-fraudulent reasons to "manipulate a mobile unit's operating software;" and (b) secure methods to accomplish that "manipulation" without undermining the industry's anti-fraud efforts. See TIA Motion at ¶¶4-5. C2+ repeatedly has argued that where such manipulation is conducted by responsible parties³ through an encrypted technology to protect against unauthorized use⁴ -- and is

³ C2+ has proposed that parties performing ESN "manipulations" be required to hold FCC licenses, maintain records of all procedures performed, and notify cellular carriers of the particular customers for whom they have performed such procedures. See C2+ Petition for Reconsideration, filed Dec. 19, 1994 ("C2+ Petition"), at 22-23; C2+ Reply to Comments of McCaw Cellular Communications, Inc., filed Feb. 2, 1995 ("C2+ Reply To McCaw"), at 5-6.

⁴ In endorsing authentication (with respect to phones initially type-accepted after July 1, 1995), TIA and CTIA have reported that it "would take a potential fraudulent actor, using a computer incorporating a '486' processor, nearly 3 million years to decode" the authentication keys and use them fraudulently. Joint Reply at ¶8 (emphasis in original). Apparently, this is based on TIA's estimate that "there is only a 1 in 2^{128} chance of correctly guessing" an authentication code. See TIA Stay Motion at 13. C2+ has previously stated (and no other party has disputed) that the odds of randomly programming a working ESN using the C2+ decryption device without the required codes provided by C2+ are one in 2^{64} . See C2+ Reply To McCaw, Appendix 1 at 2 and Exhibit 1 at 2. As CTIA is well aware, the C2+ decryption device will cause the phone to render itself inoperable after only a few unsuccessful attempts. C2+ Petition at 10-11 and Exhibit 1 at

performed at the specific request of a bona fide cellular customer to enable the customer to make and pay for calls from an additional phone which emulates the ESN of his primary phone⁵ -- there is no fraud⁶ and substantial benefit to consumers.⁷ Because there is no evidence that C2+ induces or contributes to cellular fraud, C2+ has requested that the Commission reconsider its Report and Order and delete all adverse findings against C2+. C2+ Petition at 3-4.

However, C2+ objects to the majority of the "minor changes" proposed by TIA and CTIA because they presume that

¶¶3-7. Thus, contrary to CTIA's claims, the odds of using a C2+ decryption device to program a working ESN into a phone without the codes provided by C2+ are nearly as great as the odds of cracking the authentication codes endorsed by CTIA or TIA.

⁵ The Commission repeatedly has stated that the primary purpose of the ESN is to "enable the carriers to bill properly for calls made from the telephone." Report and Order at ¶54.

⁶ In contrast to the situations described by TIA, in which ESNs are "intercept[ed] by unauthorized users, who may pirate and insert the ESNs into units that effectively become 'clones'...allowing the fraudulent misdirection of call billing information" (Joint Reply at ¶6), C2+ inserts the cellular customer's ESN into another phone owned by that customer at the customer's request, precisely so that the customer will be billed for all calls made from his "extension" phone. See C2+ Petition at Exhibit 1, ¶¶7-9.

⁷ See C2+ Reply to CTIA Opposition to Petition for Reconsideration, filed Feb. 2, 1995 ("C2+ Reply To CTIA"), at Appendix 1, ¶¶2-8 (majority of cellular subscribers want extension service "for safety, security and convenience" but do not purchase service because of additional recurring charges imposed by carriers); see also MTC Communications, Inc. Petition for Reconsideration, filed Dec. 19, 1994 ("MTC Petition"), at 3 (police, fire and medical uses of emulated cellular extension phones).

only manufacturers and their commonly owned and controlled affiliates have the "ability to...manipulate a mobile unit's operating software without compromising the industry's efforts to combat cellular fraud." Id. at ¶4. The "minor changes" proposed by TIA/CTIA actually change the vast majority of the rule and have a major impact on its scope and application.⁸ In short, the proposed changes substantially narrow the application of the rule with respect to "manufacturers" and their "commonly owned and controlled affiliates," and substantially expand the scope of the rule as it applies to everyone else, including cellular consumers.⁹

⁸ In addition, TIA states that "no party opposed TIA's request...to incorporate authentication features" into future cellular equipment. TIA Motion at ¶3. However, C2+ expressly qualified its support for future authentication on the condition that it is not used as a guise to enable carriers to continue "to demand unnecessary monthly service charges from bona fide customers desiring to use more than one cellular phone." See C2+ Comments on Petition for Reconsideration filed by The Ericsson Corporation and Petition for Clarification and Reconsideration filed by The Mobile and Personal Communications 800 Section of the Telecommunications Industry Association, filed Jan. 20, 1995, at 5.

⁹ Specifically, TIA/CTIA would limit responsible ESN manipulation performed for bona fide cellular customers only to: (a) "the mobile unit's manufacturer, or its commonly owned and controlled affiliate;" (b) "protected locations" (i.e. facilities "owned and operated by the manufacturer or its commonly owned and controlled affiliate") if the mobile unit has been activated on any cellular system; and (c) repairs or upgrades in which the ESN is transferred from one unit to another rather than "emulated" for purposes of providing a cellular extension phone. See Joint Reply at ¶¶13-14 and Attachment A.

Innumerable cellular subscribers will be directly affected by these "minor changes" because use of their phones will be prohibited if the ESN was changed by anyone other than the manufacturer.¹⁰ Likewise, numerous small businesses like C2+ will be directly affected by the TIA/CTIA proposal to limit ESN modification only to manufacturers and their wholly-owned and controlled affiliates and to prohibit the use of any phone with an ESN other than that programmed by the manufacturer. Nevertheless, TIA/CTIA proposed these rule changes for the first time in replies to petitions for reconsideration, thereby depriving other interested parties of an opportunity to comment on them. TIA has also asked for an extension of time to allow TIA/CTIA to make even more proposed "minor modifications" to the rules, again without affording other interested parties an opportunity to review and comment on those proposals.

Having already been victimized by "off-the-record" meetings which resulted in adverse findings against C2+ in

¹⁰ TIA and CTIA propose to make use of such phones a violation of Commission rules despite the fact that cellular manufacturers, carriers and third-party dealers have participated in ESN modification programs involving countless customer phones for years. See, e.g. MTC Petition at 2-3 and Exhibit 1 (Motorola "Cellular Subscriber Technical Training Manual" describing ESN transfer procedure); Reply Comments of Motorola, Inc., filed Nov. 5, 1992, at 2-3 (Motorola has an ESN transfer repair "program in place, and it has been positively accepted by a number of cellular service providers, as well as by the cellular user public" and by CTIA, whose "equipment certification program currently...permits these ESN transfer procedures.").

this proceeding,¹¹ C2+ should not be required to hit a moving regulatory target whose size and shape continues to change based on industry proposals advanced only in ex parte meetings or after relevant comment periods have closed. Although C2+ would like to respond in detail to the "minor changes," already proposed by TIA/CTIA, those parties have indicated that they will propose additional rule changes within the next thirty days. Consequently, rather than responding piecemeal to the various "minor changes" and "minor modifications" which have been or may be submitted by TIA/CTIA, C2+ respectfully requests an opportunity to comment on any or all of those proposed changes once "the matters [are] finally presented to the Commission within the next thirty (30) days."


¹¹ See C2+ Reply To CTIA at 3-7 and Appendix 1 at ¶11 and Exhibit B. CTIA now claims that its October 1992 meeting and other contacts with the Commission were seeking only "enforcement of Section 22.915 of the Commission's rules, the pre-existing ESN...security rule for cellular telephones" and that those contacts were not treated by the Commission "as a comment relating to the above-referenced rulemaking proceeding." See Letter dated Feb. 10, 1995 from Michael Altschul to William F. Caton at 1. However, two facts clearly undermine that interpretation. First, the precise issues discussed at the 1992 meeting and in related contacts by CTIA reappeared two years later in the form of adverse findings against C2+ in the Report and Order -- despite the absence of any discussion or mention of those issues in any of the comments cited by the Commission in the Report and Order. Second, Section 22.915 (now 22.933) merely incorporates by reference the cellular compatibility standards, which in turn, address attempts to change "the serial number circuitry." Cellular Communications Systems, 86 FCC 2d 469, 578 (1981), at Section 2.3.2. It is undisputed that C2+ does not change or tamper with the circuitry.

Conclusion

If the Commission is inclined to grant the TIA Motion and consider the proposed rule changes which have been or will be submitted by TIA/CTIA, it should reopen the comment period to permit all interested parties to review and comment on the proposed changes. In addition, absent any evidence that C2+ induces or contributes to cellular fraud, C2+ respectfully requests that all references to C2+ in the Report and Order be deleted.

February 15, 1995

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments on Motion for Extension of Time" was served this 15th day of February, 1995 by first-class mail, postage prepaid, upon the following:

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